

**IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ELIZABETH HORTON,

PLAINTIFF,

vs.

DON WILLIAMS, etc, et. al.

DEFENDANTS.

2006 AUG -9 P 12: 13

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

CASE NO: 3:06CV526-DRB

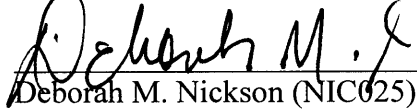
RESPONSE TO MOTION TO DISMISS OF ALABAMA MEDICAID AGENCY

Elizabeth Horton, Plaintiff, by and through her undersigned attorney, hereby responds to Motion to Dismiss of Defendant Alabama Medicaid Agency saying that the Motion should be denied because of the following:

Defendant Motion to Dismiss should be denied because it has failed to show this court that no relief could be granted under any set of facts that could be proved consistent with the allegations raised in the complaint. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). In addition, the Supreme Court has made abundantly clear, Federal Rules of Civil Procedure, Rule 8(a) "do [es] not require a claimant to set out in detail the facts upon which he bases his claim." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993)(internal quotes omitted). The simplified notice pleading standard of Rule 8(a) (2)] relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). Finally, the deficiencies if any in the complaint can be cured by allowing plaintiff to amend her complaint.

Based on the above defendant's Motion to Dismiss should be denied.

Respectfully Submitted,


Deborah M. Nickson (NIC025)

Attorney for Petitioners
2820 Fairlane Drive, Suite A-10
Montgomery, Alabama 36116
334-213-1233

CERTIFICATE OF SERVICE

I hereby certify that On August 7, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following:

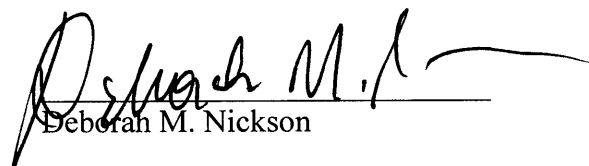
Charles A. Stewart, III
Bradley, Arant Rose & White LLP
The Alabama Center for Commerce
401 Adams Avenue
Montgomery, Alabama 36104

Laura Taaffe
Bradley, Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2104

Dorman Walker
Balch & Bingham LLP
Post Office Box 78
Montgomery, Alabama 36101

William O. Butler
Deputy Attorney General
Alabama Medicaid Agency
Post Office Box 5624
Montgomery, Alabama 36103-5624

Jack W. Wallace, Jr.
Attorney for Defendant Gerald Shockley
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130


Deborah M. Nickson